

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:) Chapter 11
)
FORESIGHT ENERGY LP, *et al.*,) Case No. 20-41308-659
)
Debtors.) Jointly Administered
)
) Related Docket No.: 13

**FINAL ORDER DETERMINING ADEQUATE
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

Upon the Motion¹ of Foresight Energy LP and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) requesting entry of a final order (this “Final Order”), pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) determining that the Proposed Adequate Assurance provides the Utility Providers with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, (b) prohibiting the Utility Providers from altering, refusing, or discontinuing services, (c) approving the Proposed Adequate Assurance Procedures, and (d) granting related relief, all as more fully described in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri; and it appearing that venue of the Debtors’ chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the

¹ All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

relief requested in the Motion; and upon consideration of the First Day Declaration; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** to the extent set forth herein.
2. All Utility Providers are prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors as a result of the Debtors' bankruptcy filing or any outstanding prepetition invoices, or requiring payment of a deposit or receipt or any other security for continued service postpetition, other than in accordance with the Proposed Adequate Assurance Procedures.
3. The following Proposed Adequate Assurance Procedures are approved in all respects:
 - (a) If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) the Debtors, One Metropolitan Square, 211 North Broadway, Suite 2600, St. Louis, Missouri 63102, Attention: Cody Nett, Esq.; (ii) proposed counsel to the Debtors, (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, Attention: Alice Belisle Eaton, Esq., and Patrick M. Steel, Esq., and (B) Armstrong Teasdale LLP, 7700 Forsyth Boulevard, Suite 1800, St. Louis, Missouri 63105, Attention: Richard W. Engel, Jr., Esq., and John G. Willard, Esq.; and (iii) proposed counsel to the official committee of unsecured creditors (the "Committee"), (A) Whiteford Taylor & Preston, LLP, 3190 Fairview Park Drive, Suite 1800 Falls Church, VA 22042-4510, Attention: Christopher A. Jones, Esq., and David W. Gaffey,

Esq., and (B) Affinity Law Group, 1610 Des Peres Road, Suite, 100, St. Louis, MO 63131, Attention: John Talbot Sant, Jr. (collectively, the “Adequate Assurance Notice Parties”). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court; provided that in no event shall a Utility Provider be permitted to receive aggregate disbursements in excess of the total amount set forth for such Utility Provider under the column labeled “Proposed Adequate Assurance Deposit” on the Utility Services List.

- (b) The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be removed from the account and returned to the Debtors on the earlier of (i) the Debtors’ termination of Utility Services from such Utility Provider or (ii) the effective date of any chapter 11 plan approved in these chapter 11 cases.
- (c) Any Utility Provider desiring additional assurances of payment must serve a written request (an “Additional Assurance Request”) on the Adequate Assurance Notice Parties so that it is actually received by the Adequate Assurance Notice Parties no later than twenty (20) days after the entry of an order granting the relief requested herein (the “Request Deadline”).
- (d) Any Additional Assurance Request must (i) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each account, (ii) provide a report on and certify the Debtors’ payment history on each account for the previous twelve (12) months, (iii) disclose any existing security deposit, (iv) provide an explanation of why the requesting Utility Provider believes the Proposed Adequate Assurance is not Adequate Assurance of future payment, and (v) specify the amount and nature of Adequate Assurance that would be satisfactory to the Utility Provider.
- (e) Without further order of the Court, the Debtors may, upon consultation with the Committee, (i) enter into agreements granting additional Adequate Assurance to a Utility Provider, including cash deposits, prepayments, or other forms of security if determined by the Debtors to be reasonable, and (ii) extend the Debtors’ time to file a Determination Motion (as defined below).
- (f) If the Debtors determine that an Additional Assurance Request is unreasonable, then such Utility Provider shall have the greater of (i) twenty (20) days from the receipt of the Proposed Orders or

(ii) thirty (30) days from the entry of the Proposed Orders (the “Resolution Period”) to negotiate with the Debtors to resolve the Utility Provider’s Additional Assurance Request; provided that the Debtors and Utility Provider may extend the Resolution Period by mutual agreement. If a resolution is not reached within the Resolution Period, then the Debtors shall file a motion (the “Determination Motion”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Adequate Assurance Deposit, plus any additional consideration offered by the Debtors, constitutes Adequate Assurance of payment. Pending resolution of any such Determination Motion, the Utility Provider filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of the commencement of these chapter 11 cases, unpaid charges for prepetition services, or on account of any objections to the Debtors’ Proposed Adequate Assurance.

- (g) The Proposed Adequate Assurance shall be deemed Adequate Assurance of payment for any Utility Provider that fails to make an Additional Assurance Request.

4. A Utility Provider shall be deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code unless and until, subject to the limitations of this Final Order, (a) the Debtors agree to (i) an Additional Assurance Request or (ii) an alternative adequate assurance payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

5. The Debtors’ Proposed Adequate Assurance is hereby approved and is deemed adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code.

6. The Debtors are authorized, in their sole discretion, to amend the Utility Services List to add or remove a Utility Provider and this Final Order shall apply to any such Utility Provider that is subsequently added to the Utility Services List.

7. The Adequate Assurance Deposit shall be removed from the Adequate Assurance Account on the earlier of (a) the Debtors' termination of Utility Services from such Utility Provider or (b) the effective date of any chapter 11 plan approved in these chapter 11 cases.

8. The Debtors shall serve a copy of this Final Order on each Utility Provider listed on the Utility Services List within two (2) business days after the date this Order is entered, and shall promptly serve this Final Order on each Utility Provider subsequently added by the Debtors to the Utility Services List.

9. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests, automated clearing house transfers and other payment orders drawn or issued by the Debtors under this Final Order, whether presented or issued before or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on representations of the Debtors as to which checks, electronic funds transfer requests, and payment orders are authorized to be paid pursuant to this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. The Debtors are authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to amounts authorized to be paid herein.

11. Notwithstanding anything in the Motion or this Final Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall


be subject in all respects to, as applicable: (a) the orders approving the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing facilities (collectively, the "DIP Orders"); (b) other documentation governing the Debtors' use of cash collateral and postpetition financing facilities; (c) the Budget (as defined in the DIP Orders); and (d) the terms and conditions set forth in the Restructuring Support Agreement (as defined in the DIP Orders). To the extent there is any inconsistency between the terms of any of the DIP Orders and this Final Order, the terms of the DIP Order (or DIP Orders, as applicable) shall control.

12. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity or priority of any claim or lien (or the priority thereof) against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to subsequently dispute or contest such claim or lien on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion, (e) a request or authorization to assume or adopt any agreement, contract, or lease under section 365 of the Bankruptcy Code or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or applicable law.

13. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective upon its entry.

15. No later than two (2) business days after the date of this Final Order, the Debtors shall serve on the Notice Parties a copy of the Final Order and shall file a certificate of service no later than twenty-four (24) hours after service.


KATHY A. SURRATT-STATES
Chief U.S. Bankruptcy Judge

DATED: April 7, 2020
St. Louis, Missouri
jjh

Order Prepared By:

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Utility Services List

Foresight Energy
Utility Services List

Utility Provider and Address	Debtor(s)	Account Number(s)	Type	Average Monthly Expenditure	Average 2-Week Expenditure	Prepetition Deposits	Proposed Adequate Assurance Deposit
AKIN WATER DISTRICT	Sugar Camp Energy, LLC Seneca Rebuild, LLC	00055, 10250, 10308, 10310, 10497, 10580, 10605, 10606, 10610, 10611, 10712, 10715, 10716, 10810, 10811, 10925, 10957, 10958, 11230, 11258, 11303, 11780, 40334, 40335, 40560, 40565, 40585, 40960, 71595, 81070, 40000, 40134, 10305, 10307, 103315, 10312	Water	\$34,890	\$17,444	–	\$17,444
AMEREN ILLINOIS	Macoupin Energy LLC Oeneus LLC d/b/a Savatran LLC Hillsboro Energy LLC	0838089007 3155371000 3933417006 9690830005 06691-55014 0938050000 4303360044	Electric	\$266,267	\$133,133	–	\$133,133
AT&T	Macoupin Energy LLC Hillsboro Energy LLC Coalfield Construction, LLC	287025551266 287021834553 287022945004 287265180081	Telecommunications	\$2,500	\$1,250	–	\$1,250

Utility Provider and Address	Debtor(s)	Account Number(s)	Type	Average Monthly Expenditure	Average 2-Week Expenditure	Prepetition Deposits	Proposed Adequate Assurance Deposit
	Foresight Energy Services, LLC						
AT&T TELECONFERENCE SERVICES	Foresight Energy Services, LLC	72506778-00001	Telecommunications	\$598	\$299	–	\$299
BULLDOG SYSTEMS, LLC	Sugar Camp Energy, LLC Seneca Rebuild, LLC	20224, 600916, 609278, 606129, 606324, 607427, 618472, 600421, 603526, 618339, 605026, 609225	Trash	\$15,325	\$7,662	–	\$7,662
CENTURYLINK	Foresight Energy Services, LLC	87460426	Telecommunications	\$1,151	\$576	–	\$576
CITY OF HILLSBORO	Hillsboro Energy LLC	007 20470 00 007 20480 00 1760134007	Water	\$23,903	\$11,952	–	\$11,952
CONFERTEL	Foresight Energy Services, LLC	None	Telecommunications	\$2	\$1	–	\$1
CONSOLIDATED COMMUNICATIONS	Hillsboro Energy LLC	217-532-6334/0 217-532-7310/0	Telecommunications	\$3,144	\$1,572	–	\$1,572
CORINTH WATER DISTRICT	Williamson Energy, LLC Coalfield Construction, LLC	SUPPF3293, MACHM2440, MACH2540, DEVEW3536, ENERW3857, ENERW3821, ENERW3711, KENNM3518, MINIM3809 ENERW3505	Water	\$9,858	\$4,929	–	\$4,929
CMC RURAL WATER DISTRICT	Macoupin Energy LLC	083 60000 00 068 00000 00	Water	\$1,970	\$985	–	\$985

Utility Provider and Address	Debtor(s)	Account Number(s)	Type	Average Monthly Expenditure	Average 2-Week Expenditure	Prepetition Deposits	Proposed Adequate Assurance Deposit
CWI OF ILLINOIS #732/ REPUBLIC SERVICES	Williamson Energy, LLC	3-0732-1027409 3-0732-5008126	Trash	\$9,330	\$4,665	–	\$4,665
DC WASTE & RECYCLING, INC.	Hillsboro Energy LLC	1719100	Trash	\$2,860	\$1,430	–	\$1,430
FLOWERS SANITATION SERVICE	Macoupin Energy LLC	131597-001 131597-002	Trash	\$2,797	\$1,398	–	\$1,398
FRONTIER COMMUNICATIONS SERVICES	Macoupin Energy LLC Hillsboro Energy LLC Williamson Energy, LLC	217-854-3291-120 106-2 217-196-1028-053 117-2 217-534-6764-122 618-2 224-159-2000-021 212-5	Telecommunications	\$3,014	\$1,506	–	\$1,506
FUTIVA LLC	Sugar Camp Energy, LLC	123083	Telecommunications	\$101	\$50	–	\$50
HAMILTON COUNTY WATER DISTRICT	Sugar Camp Energy, LLC	05000662Z, 05000457A	Water	\$143	\$72	–	\$72
HOSTWAY	Foresight Energy Services, LLC	foresighte359824	Telecommunications	\$118	\$59	–	\$59
Level 3 / CENTURY LINK	Foresight Energy Services, LLC	321481	Telecommunications	\$3,848	\$1,924	–	\$1,924
MJM Electric	Hillsboro Energy LLC Oeneus LLC d/b/a Savatran LLC	624302, 1263600, 1263700	Electric	\$160	\$80	–	\$80
REND LAKE CONSERVANCY	Coalfield Construction, LLC	3703	Water	\$24	\$12	–	\$12
SIT-CO LLC	Sitran LLC	None	Telecommunications	\$688	\$344	–	\$344

Utility Provider and Address	Debtor(s)	Account Number(s)	Type	Average Monthly Expenditure	Average 2-Week Expenditure	Prepetition Deposits	Proposed Adequate Assurance Deposit
SOUTHEASTERN ILLINOIS ELECTRIC	Sugar Camp Energy, LLC Williamson Energy, LLC	1056410, 106423, 1069999, 1070017, 1070787, 1077538, 1080081, 1065540, 1067948, 1082128, 1063704, 1073822, 1070321, 1055811, 1057455, 1057736, 1065423, 1079948, 1080806, 1081445, 1080131, 1083140, 1078513, 1080981, 1082016, 1083076, 1052858, 1070577, 1071060, 1082128, 1067948, 1065540, 1077521, 1071846, 1082462, 1084309	Electric	\$3,572,953	\$1,786,477	\$2,900,000	–
SOUTHEASTERN ILLINOIS ELECTRIC	Oeneus LLC d/b/a Savatran LLC Coalfield Construction, LLC Seneca Rebuild, LLC	1060008 1065949 1080806 1070321	Electric	\$4,879	\$2,438	–	\$2,438
SPECTRUM BUSINESS/CHARTER COMMUNICATIONS	Foresight Energy Services, LLC	8345780014248500	Telecommunications	\$1,000	\$500	–	\$500
VECTREN ENERGY DELIVERY	Sitran LLC	01-300574289-1406156 8 01-300549093-1166281 4 01-300549093-1166290 3	Electric	\$48,133	\$24,067	–	\$24,067

Utility Provider and Address	Debtor(s)	Account Number(s)	Type	Average Monthly Expenditure	Average 2-Week Expenditure	Prepetition Deposits	Proposed Adequate Assurance Deposit
VERIZON	Sugar Camp Energy, LLC Williamson Energy, LLC	285667821-00001 442023057-00001	Telecommunications	\$4,463	\$2,231	–	\$2,231
WAYNE-WHITE COUNTIES ELECTRIC COOP	Sugar Camp Energy, LLC Oeneus LLC d/b/a Savatran LLC	2652300, 2486000, 2485600, 2485700, 2485800, 2485900, 2486100, 2486200, 2486300, 2486400, 2486500	Electric	\$8,593	\$4,297	–	\$4,297
WINDSTREAM	Foresight Energy Services, LLC	7078622	Telecommunications	\$3,106	\$1,553	–	\$1,553
Total				\$4,025,814	\$2,012,967	\$2,900,000	\$226,430